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**NO. 31**

**IN THE**  
**Supreme Court of the United States**

**OCTOBER TERM, 1967**

**WYANDOTTE TRANSPORTATION CO., ET AL,**  
*Petitioners*

**v.**

**UNITED STATES OF AMERICA, Respondent**

**BRIEF ON BEHALF OF THE**  
**AMERICAN WATERWAYS OPERATORS, INC.**  
**AND**  
**LAKE CARRIERS' ASSOCIATION**  
**AS AMICI CURIAE**

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## INDEX

	Page
Consent of Parties .....	1
Statement of Interest .....	1
What is the Question? .....	2
Argument .....	6
Uniform Construction of Wreck Statute Entitled to Great Weight .....	6
Any change in Law Should Be Made by Con- gress and Not By Judicial Implication .....	8
Congress Did Not Overlook The Obvious .....	16
Congressional Silence Indicates Its Satisfaction With Wreck Statute .....	18
Conclusion .....	19
Certificate of Service .....	21
Appendix A .....	23

## LIST OF AUTHORITIES

CASES	Page
Bisso v. Inland Waterways Corp., 1955, 349 U.S. 85, 99, 99 L.Ed. 911, 922, 75 S.Ct. 629 .....	8
Consumers Import Co. v. Kabushiki Kaisha Ka- wasaki Zosenjo, 1943, 320 U.S. 249, 252, 253, 88 L.Ed. 30, 33, 64 S.Ct. 15 .....	7
Graves v. New York, 1939, 306 U.S. 466, 479, 83 L.E. 927, 932, 59 S.Ct. 595 .....	18
Loud v. United States, 6 Cir. 1923, 286 Fed. 56 The Manhattan, D.C. Pa. 1935, 10 F.Supp. 45, affd. 3 Cir. 1936, 85 F.2d 427, cert. den. sub nom, U. S. v. The Bessemer, 1937, 300 U.S. 654, 81 L.Ed. 864, 57 S.Ct. 432 .....	3, 7
	7

## II

### CASES

	Page
Missouri v. Ross, 1936, 299 U.S. 72, 75, 81 L.Ed. 46, 49, 57 S.Ct. 60	6
U. S. v. Bethlehem Steel Corp. (The Texmar), 9 Cir. 1963, 319 F.2d 512, cert. den. 375 U.S. 966, 11 L.Ed.2d 415, 54 S.Ct. 484	7
U. S. v. Bridgeport Towing Line, Inc., D.C. Conn. 1926, 15 F.2d 240	7
U. S. v. Hall, 1 Cir. 1894, 63 F. 472	8
U. S. v. Moran Towing & Transportation Co., et al., 4 Cir. 1967, 374 F.2d 656	4
U. S. v. Ryan, 1931, 284 U.S. 167, 174, 76 L.Ed. 224, 228, 52 S.Ct. 65	6
U. S. v. Standard Oil Co. of California, 1947, 322 U.S. 301, 314, 91 L.Ed. 2067, 2075, 67 S.Ct. 1605, 1611	15
U. S. v. Wilson, 2 Cir. 1956, 235 F.2d 251	7
Zubic v. U. S., 3 Cir. 1951, 190 F.2d 278	7

### MISCELLANEOUS

Harbors Act, Section 56, 1847 (10 & 11 Vict. c. 27)	17
House Report No. 1633, 88th Congress, 2d Section, entitled "Reimbursement of Government Expenditures for Removal of Hazardous Substances"	13
H.R. 11727 and H.R. 11822 (1964)	13
H.R. 2100 and H.R. 2842 (1965)	13
H.R. 17371 (1966)	13
H.R. 10593 (1967)	13
Report of Natural Resources & Power Subcommittee of the Committee on Government Operations of the House of Representatives	13
The Wreck Statute, 33 U.S.C.A. §§409, 414, 415, March 3, 1899	3, 4, 9, 14, 16, 18

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AND  
LAKE CARRIERS' ASSOCIATION  
AS AMICI CURIAE**

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*To The Honorable Judges Of Said Court:*

**CONSENT OF PARTIES**

All of the parties in this cause have given their written consent to the filing of this Brief *Amici Curiae*. Such written consent has been filed with the Clerk.

**STATEMENT OF INTEREST**

THE AMERICAN WATERWAYS OPERATORS, INC. is the national trade association that represents the

interests of, and includes in its membership, water carriers of all groups operating on United States inland waterways other than the Great Lakes. These groups include carriers that are regulated by the Interstate Commerce Commission, carriers exempt from such regulation but operating for-hire and private carriers not subject to such regulation. They range in size from owners of a single piece of equipment to the sixth largest water carrier (in terms of equipment) on such waterways.

**LAKE CARRIERS' ASSOCIATION** is a voluntary organization of owners and operators of vessels under the American Flag engaged in commerce on the Great Lakes. There are enrolled in the Association over 200 vessels documented under the laws of the United States. These vessels account for more than 98% of the total trip carrying capacity of all the American Flag vessels now engaged in domestic commerce on the Great Lakes.

Both of these associations, whose members are directly affected by the drastic change made in the law by the Court below, respectfully submit that the decision of the Court of Appeals is clearly wrong and should be set aside.

### **WHAT IS THE QUESTION?**

Boiled down to its simplest terms, this case presents basically this single question to this Court for decision:

Having relied in making business decisions on the uniform application of the Wreck Statute by the federal courts for more than 43 years, is the American maritime industry to have a new and awesome economic burden imposed upon it for which Congress has not provided and which is directly contrary to

the heretofore uniform construction of the Wreck Statute by the federal courts?<sup>1</sup>

The American Waterways Operators, Inc. and the Lake Carriers' Association, who represent all types of operators of marine equipment moving water borne commerce on our nation's rivers, inland waterways and the Great Lakes, respectfully submit that this question must be answered in the negative.

For more than sixty-five years those engaged in the transportation of water borne commerce in the United States have founded and operated their businesses relying on what was—at least until the decision in the Court below—the well-settled proposition that when disaster struck and one of their vessels was accidentally sunk, only the vessel and its cargo *in rem* could be held liable for the cost of removal if the Government of the United States determined that it was an impediment to navigation.

Relying on what had been the settled law of the land for these sixty-seven years, having planned the financial operations of their companies with this important economic fact seemingly well established, the American maritime industry finds itself confronted with a complete reversal of this settled principle of law by the decision of the Court below. Blandly brushing aside the most

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1. The Wreck Statute, 33 U.S.C.A. #409, 414, 415, passed March 3, 1899, was first subjected to judicial construction on the cost of the removal of a sunken vessel in 1923 in *Loud v. United States*, 6 Cir. 1923, 286 Fed. 56. Thus, for 24 years no attempt was made to impose *in personam* liability on a vessel owner for removal costs, so it would not be inaccurate to say that the American maritime industry had relied on the uniform application of the Wreck Statute for more than 67 years prior to the decision of the Court below.

important and significant economic fact—that the industry is completely unprepared to meet any such new economic burdens—the Court below proceeded to create and impose on the American maritime industry an entirely new liability whose awesome economic potentials are dramatically demonstrated by the alleged cost of removal of the barge Wychem 112 of \$3,081,000.00 in this case.

Acknowledging as it had to do, that Congress did not “authorize a suit by the Government for the recovery of removal expenses” the Court below nevertheless “implied” such authority.<sup>2</sup> This it did in the face of the refusal to do so by 11 other federal courts to whom the government apparently had made such a request over the last 43 years.<sup>3</sup> Since the decision of the Court below, still another Court, the Court of Appeals for the Fourth Circuit, has declined to thus amend the Wreck Statute.<sup>4</sup>

In disregarding all this judicial precedent and in so amending the statute, the Court below failed to properly consider and evaluate the following factors:

1. That the uniform construction of the Wreck Statute for 43 years by the federal courts is entitled to great

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2. R. 158, 367 F.2d 971, at page 976.

3. It is interesting to note that prior to the decision of the Court below the government's request for such a judicial amendment of the Wreck Statute had been considered by 7 different United States District Judges and by 17 different United States Circuit Judges, a total of 24 different federal judges. Until the decision of the Court below in this case, 23 of these 24 federal judges had declined to so amend the statute and only 1 judge concluded that the government's request had any merit at all.

4. *United States v. Moran Towing & Transportation Co., et al*, 4 Cir. 1967, 374 F.2d 656.

weight and is not to be lightly set aside and disregarded.<sup>5</sup>

2. That any such change in the law, which involves such awesome economic implications for the American maritime industry, should come, not by judicial implication, but from Congressional enactment. This for the reason that it is only through the legislative process that the best interests of all those directly concerned—the national government, state and local governments, the maritime industry, and the people of the United States—can be fully and adequately considered to insure that only those changes in the statute which are fair to all will be enacted by the elected representatives of the people.<sup>6</sup>
3. That the Wreck Statute expressly provides that the expenses of removing a wreck “shall be a charge against such craft and cargo” only, and to hold that these expenses are a personal charge against a party negligently causing a vessel to sink is to hold, 68 years after the fact, that Congress overlooked this most obvious of remedies.<sup>7</sup>
4. That Congress has not seen fit to amend the Wreck Statute to provide for the personal remedy the government here seeks is strong evidence that Congress is completely satisfied with the statute it enacted 68 years ago and the uniform judicial interpretations of it for the past 43 years.<sup>8</sup>

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5. See full discussion, *infra*, pages 6 to 8.

6. See full discussion, *infra*, pages 8 to 16.

7. See full discussion, *infra*, pages 16 to 17.

8. See full discussion, *infra*, pages 18 to 19.

We now turn to a separate consideration of each of these important factors.

## ARGUMENT

### UNIFORM CONSTRUCTION OF WRECK STATUTE ENTITLED TO GREAT WEIGHT

This Court has stated on many occasions that the uniform construction of a statute by the lower federal courts is not to be lightly regarded and is to be set aside only with much hesitation and reluctance:

"... we should *hesitate to set aside*, at this late date, the *uniform construction* given to the section with respect to this question by the *lower federal courts* for more than sixty years." (Emphasis supplied)<sup>9</sup>

"... The decision in that case was made nearly thirty years ago, since which time the lower federal courts have almost unanimously followed the rule there stated. . . . These decisions are plainly correct; but, if they were doubtful, we should at this late date *hesitate to disturb them*. . . ." (Emphasis supplied)<sup>10</sup>

While purporting to subject its "reading of the statutes" to the "light of the cases decided under the Act",<sup>11</sup> the Court below nevertheless completely ignored the undeniable fact that every court before it who had been asked the question:

9. *U.S. v. Ryan*, 1931, 284 U.S. 167, at page 174, 76 L.Ed. 224, at page 228, 52 S.Ct. 65.

10. *Missouri v. Ross*, 1936, 299 U.S. 72, at page 75, 81 L.Ed. 46, at page 49, 57 S.Ct. 60.

11. R. 158, 367 F.2d 971, at page 976.

Can the government recover the costs of removal of a sunken vessel from a party *in personam* if that party's negligence contributed to the sinking?

had answered it with an emphatic no.<sup>12</sup>

Had the Court below followed the admonitions of this Court, that the uniform construction of a statute by other federal courts is entitled to careful consideration and is to be overturned only with reluctance, it too would have answered the question in the negative. Mr. Justice Jackson reiterated the rule in 1943 thusly:

"The provision here in controversy is #1 of the Act of March 3, 1851. Despite its all but a century of existence, the contention here made has never been before this court. . . .

.....  
 "In the meantime, with the exception of *The Etna Maru*, the lower federal courts have uniformly construed the statutes. . . . We would be reluctant to overturn an interpretation supported by such consensus of opinion among courts of admiralty, even if its justification were more doubtful than this appears."<sup>13</sup>

12. *Loud v. U.S.*, 6 Cir. 1923, 286 Fed. 56; *U.S. v. Bridgeport Towing Line, Inc.*, D.C. Conn. 1926, 15 F.2d 240; *The Manhattan*, D.C. Pa. 1935, 10 F.Supp. 45, affirmed 3 Cir. 1936, 85 F.2d 427, cert. den. *sub nom. United States v. The Bessemer*, 1937, 300 U.S. 654, 81 L.Ed. 864, 57 S.Ct. 432; *Zubic v. U.S.*, 3 Cir. 1951, 190 F.2d 278; *U.S. v. Wilson*, 2 Cir. 1956, 235 F.2d 251; *U.S. v. Zubic*, 3 Cir. 1961, 295 F.2d 53; *U.S. v. Bethlehem Steel Corporation (The Texmar)*, 9 Cir. 1963, 319 F.2d 512, cert. denied 375 U.S. 966, 11 L.Ed.2d 415, 54 S.Ct. 484.

13. *Consumers Import Co. v. Kabushiki Kaisha Kawasaki Zosenjo*, 1943, 320 U.S. 249, at page 252, 253, 88 L.Ed. 30, at page 33, 64 S.Ct. 15.

Notwithstanding its 67 years of existence, and its 43 years of uniform construction by other federal courts without exception, the Court below declined to follow this well-settled interpretation of the Wreck Statute. It was clearly wrong for it to do so, and especially so when such a change in the law involves such serious economic implications not only for the American maritime industry but for the general public as well.

**ANY CHANGE IN LAW SHOULD  
BE MADE BY CONGRESS AND  
NOT BY JUDICIAL IMPLICATION**

By Congressional enactment and judicial interpretation for some 67 years the well established rule has been—no one is liable *in personam* for the costs of removing sunken vessels even though some negligence contributed to the sinking.<sup>14</sup>

“ . . . a long established rule, not remotely related to any constitutional question and readily amenable to legislative change should be adhered to. Especially in the domain of commercial affairs, stare decisis has a strong social justification. In conducting their affairs, men naturally assume that courts will not unsettle a settled rule for the conduct of business, certainly not unless experience has made manifest the need for overturning the law.” (Emphasis supplied)<sup>15</sup>

14. *In personam* liability has been imposed only where the vessel has been deliberately and willfully sunk as in *United States v. Hall*, 1 Cir. 1894, 63 F. 472.

15. *Bisso v. Inland Waterways Corporation*, 1955, 349 U.S. 85, at page 99, 99 L.Ed. 911, at page 922, 75 S.Ct. 629. Although this quotation is from Mr. Justice Frankfurter's dissenting opinion, it accurately reflects the view of the entire court. His dissent from the holding of the majority was based on a difference of opinion as to what was the established rule.

Since the very crux of the controversy here is a long established legal principle, since it is not remotely related to any constitutional question, and since it is quite readily amenable to legislative change, we respectfully submit that the Court below erred in amending the Wreck Statute by implying into it a remedy which Congress had not provided. This is especially true, where as here, so many different groups have a direct interest in the economics of the decision. The Court below recognized the interests of the government of the U. S., the state and local governments along our inland waterways system, those who transport commerce on the waterways and in fact the interest of all of the people in these important national assets. It recognized that vast sums of money have been spent to make these waterways suitable for modern commerce and to maintain them. But from these acknowledged facts the Court below proceeded full speed ahead to the conclusion that the national interest in these waterways would be best served if it amended the Wreck Statute to make it provide for *in personam* liability for the cost of removing sunken vessels.<sup>16</sup>

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16. And in so amending #15 of the Wreck Statute (33 U.S.C.A. #409), the Court below did so on a very select basis—*in personam* liability is to be imposed only if a party is negligent. Yet the statute says the *in rem* liability of the sunken craft for removal costs exists whether the craft is sunk "accidentally or otherwise". Since the statute imposes *in rem* liability on the sunken craft whether negligently or innocently sunk, on what logical basis can the Court below imply that Congress intended to impose *in personam* liability only if the craft was negligently sunk? Logically it can't, for Congress treated both the innocent and the negligent alike in providing for *in rem* liability of the craft. If Congress was wrong, the correction of the statute should be made by the Congress and not by a court speculating on what Congress intended when it enacted a statute 68 years ago.

The Court below rushed to this conclusion apparently on the assumption that the owners of the sunken craft here were financially able to stay in business even if the settled law is changed and they must pay the \$3,081,000.00 in removal costs. But in so doing, the Court below completely lost sight of the vast majority of the marine operators in the United States. Its decision can not be limited just to relatively large marine operators, but of necessity must be applied to the smallest boat operator, whether a fishing boat, an offshore crew boat, a sand or shell barge, or a pleasure craft of whatever kind of description. The imposition of *in personam* liability on the owners of the sunken craft in these cases also means the imposition of *in personam* liability on all vessel operators of whatever kind or size they might be.

Without taking an extreme example, the devastating impact of the holding of the Court below can be easily demonstrated. There are approximately 1,700 companies operating on domestic waterways, not counting those on the Great Lakes. These companies have a total of approximately 3,865 tow boats and tugs and approximately 17,085 barges and scows, or a total of approximately 20,950 pieces of marine equipment. Of this total, approximately one-third of all of the equipment is owned by 27 companies. The other two-thirds of these vessels are owned by the remaining 1,673 companies.<sup>17</sup> Obviously, there are a number of marine operators transporting goods on the domestic waterways of the United States who own only one or two pieces of marine equipment. The loss of one or more of these few pieces of equipment would

17. Statistics compiled from Corps of Engineers Transportation Series 4 (Transportation Lines on the Mississippi River System and the Gulf Intercoastal Waterway) and Transportation Series 5 (Transportation Lines on the Atlantic, Gulf and Pacific Coasts).

be a disaster indeed to these small operators, but what would be even more disastrous would be for them to be confronted with a claim from the government for \$3,000,000.00 for the costs of the removal of a piece of equipment that had been accidentally sunk.<sup>18</sup> This would be piling disaster upon disaster. If the economic loss of their vessel didn't put them out of business, the government's claim would. And make no mistake, there are many small operators who have their life's savings invested in a fishing boat or a crew boat or a tug or a barge to whom such a claim by the government would be catastrophic.<sup>19</sup>

Of course, what all of this dramatically demonstrates is the obvious fact that it is only in the Congress that all of the economic facts can be fully developed, that all of the interested parties can be heard and their positions evaluated by the elected representatives of the people. And it is in the Congress that our country's long established policy of encouraging and fostering the full development of domestic water transportation can be evaluated—a policy which has been directly responsible for the economic, commercial and industrial development of most sections of the United States.

As the Court below stated, vast sums are spent by the government for the development of our waterways, but these sums are not spent just to provide commercial

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18. For some operators, even 1% of this amount, \$30,000.00, would mean the end of their business and perhaps their life's savings.

19. Even as to the larger operators the amounts involved on a single trip are astronomical with the movement of expensive and unusual cargoes in the national interest and for defense purposes. A good example of such cargoes is the Saturn booster rockets which are transported on the waterways from Huntsville, Alabama to Cape Kennedy, Florida.

marine operators with a highway on which to transport the goods of other companies. Rather these vast sums are spent for many purposes in the national interest, such as flood control, and because of the vast importance of these domestic waterways to the economic development and the economic health of this country. Nor is this a policy of recent origin but rather it is one that has been the settled policy of our government almost since the founding of this nation. Thus, it is substantially all of the people of this country who benefit from the development and maintenance of our domestic waterways. It is their best interests which must be considered and evaluated in answering the question presented here. Through no fault of its own or of any of the parties, on a record that consisted only of the pleadings and a few affidavits, the Court below simply did not, and could not, have had the facts necessary to make such an evaluation even had this been its proper function.

The proper evaluation of these multiple economic and political factors can be made only in the Congress for as this case shows, it is simply impossible for all of these factors to be presented to a Court for its consideration. And even if they could all be presented to a Court, it is still the Congress which is charged with these legislative or policy making functions in our system of government.

The impossibility of any Court being able to obtain all of the information needed to properly evaluate all necessary factors on a matter such as this is graphically demonstrated by the recent extensive hearings of a Congressional committee on this and related matters. These hearings were held from May, 1963 to May, 1964 not only in Washington, D.C., but in many other cities throughout the country as well. The transcript of these

hearings is contained in nine volumes.<sup>20</sup> The impossibility of a Court obtaining such broad and all encompassing information from all over the country is obvious.

\* Following these extensive hearings, the committee issued its report on July 29, 1964.<sup>21</sup> This report recognized that the Rivers & Harbors Act of 1899 did not permit *in personam* recoveries of removal costs by the government and recommended the amendment of the Act to specifically permit the government to make such *in personam* recoveries. Apparently as a result of these hearings, some of the members of the committee have introduced bills in the House of Representatives adopting the draft of the bill which was attached to the committee report. Two such bills were introduced in 1964, two in 1965, one in 1966 and one in 1967.<sup>22</sup> Each of these bills was referred to the Committee on Public Works of the House of Representatives. That committee has asked for the comments of the various federal departments and agencies who have an interest in this matter and is presently awaiting such comments. The committee's draft bill and each of the bills actually introduced in the House of Representatives specifically provide that the government can recover the cost of removal of a sunken vessel if the

20. These hearings were held by the Natural Resources & Power Subcommittee of the Committee on Government Operations of the House of Representatives.

21. House Report No. 1633, 88th Congress, 2d Session, entitled "Reimbursement of Government Expenditures for Removal of Hazardous Substances."

22. H.R. 11727 and H.R. 11822 were introduced in 1964, H.R. 2100 and H.R. 2842 were introduced in January, 1965, H.R. 17371 was introduced in August, 1966 and H.R. 10593 was introduced in June, 1967.

sinking results from the owner's willful act or negligence.<sup>23</sup> Thus this matter of *in personam* liability for removal costs has been the subject of Congressional inquiry and consideration for the past several years, but to date the Congress has not seen fit to take any action other than to leave the matter under consideration by the Committee on Public Works. And this even though it is fully aware that it is annually appropriating money to pay removal costs without being able to recover them *in personam*. If the statute is to be amended, the Congress should do it only after careful consideration leads it to a decision that such a change would truly be in the national interest in this area.

With a candor that is refreshing, the government has stated the issue to be "whether the cost of removing vessels negligently sunk must be borne by the tortfeasor rather than the Public Treasury".<sup>24</sup> It asks that what the government has been paying under the Congressional directive of the Wreck Statute for 68 years, be passed on to whoever may negligently sink a vessel by creating a new tort liability. Thus, the issue, as the government concedes, is really one of federal fiscal policy, which, as this Court has always recognized, rests exclusively in the hands of Congress and not in the hands of the federal courts.

"Moreover, as the Government recognizes for one phase of the argument but ignores for the other, we have not here simply a question of creating a new liability in the nature of a tort. For grounded though

23. A copy of the draft of the bill from the House Report is printed as Appendix A to this brief, *infra*, page 23.

24. Memorandum For The United States on Petition for a Writ of Certiorari, page 1.

the argument is in analogies drawn from that field, the issue comes down in final consequence to a question of federal fiscal policy, coupled with consideration concerning the need for and the appropriateness of means to be used in executing the policy sought to be established. The tort law analogy is brought forth, indeed, not to secure a new step forward in expanding the recognized area for applying settled principles of that law as such, or for creating new ones. It is advanced rather as the instrument for determining and establishing the federal fiscal and regulatory policies which the Government's executive arm thinks should prevail in a situation not covered by traditionally established liabilities.

"Whatever the merits of the policy, its conversion into law is a proper subject for congressional action, not for any creative power of ours. Congress, not this Court or the other federal courts, is the custodian of the national purse."<sup>25</sup>

The American maritime industry from the smallest to the largest operator, has made its business commitments, has fixed its rates and planned for a reasonable profit relying on the settled rule under the Wreck Statute that when disaster struck and one of its vessels was sunk, its maximum business loss would be the craft and its cargo. Industry assumed, and justifiably, that any change in this settled rule would be made by the Congress who had established the rule in the first place. And this only after Congress, in the deliberate legislative process, had determined what was in the best interest of this nation—a nation whose economic, commercial and industrial development has been so dependent on the development

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25. *United States v. Standard Oil Company of California*, 1947, 322 U.S. 301, at page 314, 91 L.Ed. 2067, at page 2075, 67 S.Ct. 1605, at page 1611.

of its domestic water borne commerce. It is respectfully submitted that the drastic change in the law made by the Court below, with its imposing economic aspects, so far invades the legislative province of the Congress that it should not be permitted to stand.

### CONGRESS DID NOT OVERLOOK THE OBVIOUS

When a vessel is wrecked and sinks in such a way as to impede the navigation of our nation's waterways, there are only three possible sources for payment of the cost of removal:

1. The craft and cargo *in rem*.
2. *In personam* from parties whose negligence might have caused the sinking.
3. The government as a part of its function in promoting the national interest.

When Congress passed the Wreck Statute in 1899, it had to determine which of these three sources, or combinations of them, should pay for the cost of removal of sunken craft in the navigable waterways.

Congress decided that if the owner abandoned the craft, the government should pay for the cost of removal, but with these costs of removal being a "charge against such craft and cargo."<sup>26</sup> The Court below added to the statute by implication that these costs of removal were also a charge "against the owner if the vessel was negligently sunk." For the Court below to so conclude, it had to assume that the failure of the Congress to add these

26. Section 20 of Wreck Statute, 33 U.S.C.A. #415.

words to the statute was either (1) an inadvertent oversight in drafting the statute or (2) that the Congress had overlooked the most obvious potential source for reimbursement of removal costs expended by the government.<sup>27</sup>

We do not believe either assumption has any merit at all, for the simple reason that only a few words added to the statute would have provided the remedy the government asks this Court to approve and because an *in personam* remedy against a party whose negligence caused the sinking was the most obvious of all possible remedies. Additionally, perhaps the leading maritime nation of the world at that time, England, had specific legislation which provided both an *in personam* remedy against the owner and an *in rem* remedy against the wreck.<sup>28</sup>

With the imposition of *in personam* liability so easy and simple of accomplishment, and with Congress providing for only *in rem* liability of the craft and cargo, we respectfully submit that 68 years later a contrary intent of the Congress should not be read into the statute.

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27. But even if one of these assumptions is correct, who should correct the oversight? Obviously, the Congress and not the courts.

28. "The harbour master may remove any wreck or other obstruction to the harbour, dock or pier, or the approaches to the same and also any floating timber which impedes the navigation thereof, and the expense of removing any such wreck or floating timber shall be repaid by the owner of the same, and the harbour master may detain any such wreck or floating timber for securing the expenses, and upon nonpayment of such expenses, on demand, may sell such wreck or floating timber, and out of the proceeds of such sale pay such expenses, rendering the overplus, if any, to the owner on demand." (Emphasis supplied) Section 56, Harbors Act, 1847 (10 & 11 Vict. c. 27).

## CONGRESSIONAL SILENCE INDICATES ITS SATISFACTION WITH WRECK STATUTE

Not too many years ago this Court said:

"It is true that the silence of Congress, when it has authority to speak, may sometimes give rise to an implication as to the Congressional purpose. The nature and extent of that implication depends upon the nature of the Congressional power and the effect of its exercise."<sup>29</sup>

No more appropriate situation for the application of this statement than the present case could be found. Only one possible implication from the silence of Congress for 68 years can reasonably be drawn—it is completely satisfied with the Wreck Statute passed in 1899 and its uniform construction by the courts since 1923. The nature of the Congressional power in this area is absolute for it is charged with the responsibility of protecting the navigable waters of the United States and the commerce upon them. This is particularly true as to impediments or obstructions to navigation to which it addressed itself in the Wreck Statute and the other sections of the Act of March 3, 1899.

The fact that the government has been paying for the cost of removal of sunken vessels from our waterways since the passage of the Wreck Statute is a fact of which Congress has been fully aware on an annual basis. It is fully aware of this fact each year as it appropriates the necessary money to permit the Corps of Engineers to remove these vessels as it is required to do by the Wreck

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29. *Graves v. New York*, 1939, 306 U.S. 466, at page 479, 83 L.Ed. 927, at page 932, 59 S.Ct. 595.

Statute. Thus it cannot be said that this aspect of the statute has not come to the attention of the Congress, since the statute was passed, for it has come to its attention annually.<sup>30</sup>

Not having seen fit to amend the Wreck Statute for more than 68 years to provide an *in-personam* remedy against the owner of a sunken craft in addition to the *in rem* remedy it had already provided, this Congressional silence clearly indicates that its purpose in enacting the Wreck Statute was to permit the cost of removal to be recoverable only from the craft and cargo *in rem*. Its silence, while annually appropriating the necessary money to pay the removal costs not recouped through the *in rem* remedy, is subject to no other reasonable interpretation.

### CONCLUSION

We respectfully submit that the decision of the Court of Appeals should be reversed and that of the District Court affirmed because:

1. The uniform construction of the Wreck Statute by the federal courts for 43 years should not have been disregarded.
2. Any change in the law, such as that attempted to be made by the Court of Appeals below, with its awesome economic consequences for the American maritime industry, should be made only by the Congress through its careful, deliberative process where what is truly in the national interest may best be determined.

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30. Of course as previously pointed out, *supra*, pages 12 to 14, this has also been the subject of Congressional inquiry in recent years.

3. Congress expressly provided that the costs of removal were chargeable only to the craft and cargo *in rem*, and it cannot reasonably be inferred that it overlooked the obvious when it did not provide for *in personam* liability.
4. Congress not having seen fit to amend the Wreck Statute since its enactment 68 years ago while annually appropriating funds to pay removal costs, the only reasonable inference to be drawn from its silence is that Congress is satisfied with its provision for *in rem* liability only and does not desire for the government to have the *in personam* remedy which it here seeks.

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## CERTIFICATE OF SERVICE

I certify that copies of the foregoing Brief *Amici Curiae* have been served on the attorneys for all parties herein by depositing the same in a United States mail box with first class air mail postage prepaid, addressed to counsel of record at the following post office addresses on this the \_\_\_\_\_ day of August, 1967.

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## APPENDIX A

The committee suggests the following draft of bill for consideration by the appropriate House committee:

A BILL TO amend the Act of March 3, 1899, to authorize the United States to recover by civil actions the cost of removing certain obstructions from the navigable waters of the United States, and for other purposes

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That section 16 of the Act entitled "An Act making appropriations for the construction, repair, and preservation of certain public works on rivers and harbors, and for other purposes," approved March 3, 1899, as amended (33 U.S.C. 412), is amended by inserting "(a)" immediately after "Sec. 16.", and by adding at the end of such section the following new subsection:

"(b) Any person (i) who violates section 10, 11, 13, or 15 of this Act, or (ii) who is the owner of any boat, ship, vessel, barge, raft, or other watercraft or other similar obstruction which is subject to removal or destruction under section 19 or 20 of this Act (including the charterer of any vessel who mans, victuals, and navigates such vessel at his own expense or by his procurement), or (iii) who is the owner of any cargo on any such sunken or grounded boat, ship, vessel, barge, raft, or other watercraft, shall be liable to the United States in a civil action brought by the United States for all reasonably necessary costs incurred by the United States in removing the obstruction, refuse matter, material, deposit, cargo, boat, ship, vessel, barge, raft, or other watercraft, as the case may be, from the navigable waters of the United States: *Provided, however,* That such violation, obstruction, sinking, or grounding (1) resulted from

such person's violation of the aforesaid sections of this Act or from his willful act or negligence, and also (2) resulted in impeding or endangering navigation, or the life or property of persons using the navigable waters of the United States, or substantially endangering desirable marine, aquatic, or other plant or animal life of the navigable waters of the United States, or substantially impairing the usefulness of any navigable waters of the United States. The liability imposed by this subsection shall be in addition to any remedy, penalty, or forfeiture otherwise provided in this Act or any other law, except that any amounts covered into the Treasury of the United States under section 19 or 20 of this Act as the result of removing any boat, ship, vessel, barge, raft, or other watercraft or other similar obstruction, or the cargo thereof, shall be set off against any reimbursement obtained by the United States under this section for its costs in connection with the removal thereof."

